

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 210 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

JAYANTIBHAI GIRDHARBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner
MR KT DAVE AGP for Respondent Nos. 1 & 2
MS PJ DAVAWALA for Respondent No. 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 16/03/2000

ORAL JUDGEMENT

#. Joint Secretary to the Government of Gujarat, Food & Civil Supplies Department, passed an order on behalf of the government on August 5, 1999, in exercise of powers under section 3 (1) of the Prevention of Blackmarketing &

Maintenance of Supplies of Essential Commodities Act, 1980 ("PBM Act" for short), detaining the petitioner under the provisions of the PBM Act.

#. The grounds of detention indicate that the detaining authority found that the detenu who is Managing Director of Neon Fuel Limited, Khodamba, taluka Bhiloda, District Sabarkantha, was indulged in malpractice relating to liquid petroleum gas. It was also found that the liquid petroleum gas was obtained by the petitioner under a fake bill. His activities were found to be detrimental to smooth supply of LPG and therefore, the detaining authority came to conclusion that he is required to be immediately prevented from continuing his activities. The detaining authority also considered the possibility of resorting to less drastic remedies but recorded a satisfaction that in order to immediately prevent the petitioner from continuing his activities, he is required to be detained under the PBM Act as other remedies may not prove to be efficacious.

#. The petitioner challenges the detention order on various grounds. However, Mr. Prajapati has placed reliance on the ground of delay in considering the representation made by the Central Government. Mr. Prajapati submitted that the representation dated 17th September, 1999 was received on 21st September, 1999 and parawise remarks of the State Government were called for by telegram dated 24th September, 1999. He submitted that there is delay of about 3 days in calling for parawise remarks, which is not explained. Mr. Prajapati's another fold of argument was that it is not clear that parawise remarks were called for by the Competent Authority in the Central Government and to that extent, there is non-application of mind so far as the Competent Authority in the Central Government is concerned. He submitted that the detention order was approved by the State Government on 5.8.99 and the report in that regard was already with the Central Government on 11.8.99 and therefore, there was no need for the Central Government to call for the parawise remarks in the State Government and if there was any such need, it has not been explained in the affidavit-in-reply. Mr. Prajapati therefore, submitted that this has adversely affected the right of the detenu of making an effective representation as delay is caused and calling for remarks reflects non-application of mind. The detention therefore, deserves to be quashed and set aside.

#. Mr. K.T.Dave, learned AGP, representing the State of Gujarat and the detaining authority and Ms.

P.J.Davawala, learned Addl. Standing Counsel for the Union of India have opposed this petition.

#. Considering the contentions raised before this Court by the learned advocates for the parties, it is an undisputed fact that representation dated 17.9.99 was received by the Central Government on 21st September, 1999 for which parawise remarks were called for on 24th September, 1999. The lapse between 21st September, 1999 and 24th September, 1999 for calling for remarks has remained unexplained which has delayed the decision on representation.

#. It is also worth noting that the affidavit filed on behalf of the Union of India, does not make it clear as to at whose instance, the parawise remarks were called for. It definitely does not state that they were called for at the instance of the Competent Authority in the Central Government authorized to decide the representation. It is also clear that the report of the State Government on detention was received by the Central Government on 11th August, 1999 and was with the Central Government when the parawise remarks were called for on 24th September, 1999. As such, what was the need for calling for the parawise remarks, ought to have been explained by the Competent Authority in the Central Government as calling for remarks has caused delay in considering the representation which has affected the right of the detainee of making an effective representation and has rendered continued detention bad in law.

#. In this regard, a decision in the case of R.Paulsamy v. Union of India and another, reported in (1999) 4 SCC P. 415 may be referred to wherein the Apex Court has observed that even at the stage of calling for remarks, application of mind by the Competent Authority is required to be considered. In the instant case, the affidavit is silent on this point and in the absence of positive assertion about the calling of remarks at the behest of Competent Authority in the Central Government, it cannot be inferred that it was at the instance of the Competent Authority and therefore, the detention is rendered bad in law. The petition therefore, deserves to be allowed.

#. This petition is allowed. The impugned order of detention dated August 5, 1999 is hereby quashed and set aside. The detainee - Jayantibhai Girdharbhai Patel, is hereby ordered to be set at liberty forthwith, if not required in any other matter. Rule made absolute with no

order as to costs.

[A.L. DAVE, J.]

pirzada/-